

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**(Attorney Docket No. 14179US02)**

In the Application of:

Ed H. Frank

**Electronically Filed on August 11, 2009**

Serial No. 10/658,514

Filed: September 9, 2003

For: METHOD AND SYSTEM FOR  
NETWORK MANAGEMENT IN A  
HYBRID WIRED/WIRELESS  
NETWORK

Examiner: Philip J. Chea

Group Art Unit: 2453

Confirmation No. 1784

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

The Applicant requests review of the final rejection in the above-identified application, stated in the final Office Action mailed on May 11, 2009 (the Final Office Action) with a period of reply through August 11, 2009, and the Advisory Office Action mailed on July 27, 2009 (Advisory Office Action). No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is being requested for the reasons stated on the attached sheets.

**REMARKS/ARGUMENTS**

The present application includes pending claims 1-36, all of which have been rejected. Claims 1-7, 9-16, 18-25, 27-34, and 36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over USPP 2001/0024434 ("Ayyagari"), and in view of USPP 2002/0165990 ("Singhal"). Claims 8, 17, 26, and 35 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ayyagari, and in view of USPP 2003/0142651

(“Matte”). The Applicant respectfully traverses these rejections at least based on the following remarks.

## I. Examiner’s Response to Arguments in the Advisory Office Action

With regard to the rejection of claims 19-36 under 35 U.S.C. 101, the Examiner states the following:

“Examiner maintains the 101 rejection because **the system does not claim any hardware components**. It would be assumed that a physical device is present if means plus function language were used to perform the receiving step. However, **the system as presently claimed can be merely claiming the steps implemented by software.**”

See the Advisory Office Action at page 2 (emphasis added). The Examiner maintained the rejection based on the allegation that Applicant’s system claims 19-26 are “**merely claiming the steps implemented by software**”.

The Examiner is referred to Applicant’s independent claim 19, which recites: “at least one **receiver adapted to receive from** one or both of a first access point ..., at least one **controller adapted to determine** at least a minimum QoS level for operation of one or more of said first switch,...” Applicant’s system claim 19 clearly recites **active actions performed by** the claimed “**receiver**” and “**controller**”, which are respective physical devices. Therefore, such actions are **not merely “steps implemented by software,”** as alleged by the Examiner. In addition, the Examiner has not articulated how software alone, can initiate any action on its own to perform a task. In this regard, the Applicant respectfully submits that claims 19-36 are directed to statutory subject matter, and requests that the rejection to claims 19-36 under 35 USC 101 be withdrawn.

With regard to the rejection of Applicant’s claim 1 under 35 U.S.C. 103(a), the Examiner states the following:

“The Examiner disagrees that the router is a part of the SMB 240. **Paragraph 57 merely discloses that the AP may host an SBM.** The Examiner maintains that the router pictured in Fig. 2 [235] is not equivalent to the AP [200]. **Further support is in paragraph 48 disclosing that the access point [200] sends a message requesting QoS to a router [235]. The Examiner believes** this statement indicates a message containing QoS information is being sent from an AP [200] to a router [235]. The Examiner maintains that wired and wireless protocols use different messaging protocols and that Singhal shows the need to have an access point that supports both.”

See the Advisory Office Action at page 2 (emphasis added). The Examiner’s above argument that Ayyagari’s ¶0057 “**merely discloses that the AP may host an**

**SBM**" still does not overcome Ayyagari's deficiency, that **the functionality of the SBM 240 (subnet bandwidth manager) is combined with the AP** (access point) to track allocations of wireless bandwidth and QoS information. More specifically, Ayyagari's abstract states the following:

"The invention **combines a subnet bandwidth manager ("SBM") at an access point ("AP")** to track allocations of wireless bandwidth."

See Ayyagari's abstract (emphasis added). Ayyagari discloses that the wireless bandwidth allocation tracking (i.e., the alleged QoS information) functionality, is achieved by combining the AP with the SBM. In other words, Ayyagari discloses that the wireless bandwidth allocation tracking (i.e., the alleged QoS information) functionality, is not achieved by either the AP or the SBM separately. The Examiner is further referred to the following citation of Ayyagari:

"... **The starting node hosts QoS handling mechanisms** such as RSVP and Packet Scheduler. **Typically in a wireless network the access point (AP) or a base station hosts subnet bandwidth manager (SBM) functionality for managing resources across the shared wireless media.** Typically the SBM performs the reservation and querying of nodes. In an embodiment of the invention **the starting node is also the access point** for a wireless link into a network."

See Ayyagari's ¶0057 (emphasis added). Ayyagari discloses that the AP 200 (i.e., with the combined functionality of SBM 240 to handle the QoS information) is the starting node for a wireless link into a network. Wireless bandwidth allocation tracking (i.e., the alleged QoS information) functionality, is achieved by combining the AP with the SBM. In other words, Ayyagari discloses that the wireless bandwidth allocation tracking (i.e., the alleged QoS information) functionality, is not achieved by either the AP or the SBM, taken separately. Therefore, Ayyagari's **router 235** (the alleged "network device"), **together with the SBM 240, form an integral functional part of the AP 200** (i.e., the starting node), and the AP 200 as a whole, also includes the router 235 (the alleged "network device") and the SBM 240.

Furthermore, the Applicant pointed out in the 7/13/09 response that Ayyagari (in ¶0047) discloses that the "AP 200" is an aggregate computing environment (see Ayyagari at ¶0047 and Fig. 2) and includes a "node" 230 (see Ayyagari at ¶0050). The node 230 includes an antenna (tower), a SBM authentication software 205 with a Radius server 255, and a SBM 240 (with a plurality of servers, a database storage 265 and a router 235).

Based on the foregoing rationale, any message sent/received within the aggregate computing environment (i.e., the AP 200 with the integrated functionality of the router 235 within SBM), is merely **an internal message within the same node** of AP 200. Accordingly, the Applicant submits that Ayyagari (in ¶0048), which discloses that "the access point 200 sending a message requesting QoS to a router 235" (i.e., the

SBM 240), is also **an internal message within the same node** of AP 200. In this regard, Ayyagari does not disclose “**receiving at a network device, from** one or both of **a first access point ..., a first messaging protocol message containing QoS information**,” as recited in Applicant’s claim 1.

Furthermore, with regard to the rejection of claim 1, the Applicant in the 1/29/09 response also pointed out that Singhal does not even disclose or suggest using any messaging protocol message. In this regard, the Applicant maintains that there is no support to the Examiner’s allegation that combining Singhal with Ayyagari would show obviousness to modify Ayyagari to use two different messaging protocol messages in Singhal. At page 7 of the Final Office Action, the Examiner merely alleges without support and proof (as required under MPEP at § 2142), that Singhal’s wired and wireless protocols use different messaging protocols. Singhal therefore, is not combinable with Ayyagari to establish a *prima facie* case of obviousness to reject Applicant’s claim 1. Claim 1 is submitted to be allowable. Claims 10, 19 and 28 are similar in many respects to independent claim 1, and therefore, claims 10, 19 and 28 are also allowable for the same rationale as stated above with regard to claim 1.

## **II. Rejection of Independent Claims 1, 10, 19, and 28 Under 35 U.S.C. 103(a)**

### **A(1). Independent Claims 1, 10, 19 and 28**

The Applicant maintains the arguments in the 7/13/09 response to Final Office Action. The Examiner is further referred to Applicant’s arguments stated in Section I above. The Applicant submits that claims 1, 10, 19 and 28 are allowable.

### **A(2). Dependent Claims 2-9, 11-18, 20-27 and 29-36**

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 10, 19 and 28 under 35 U.S.C. § 103(a) as being anticipated by Ayyagari and Singhal have been overcome and requests that the rejection be withdrawn. Claims 2-7, 9, 11-16, 18, 20-25, 27, 29-34 and 36 depend from independent claims 1, 10, 19 and 28, respectively, and are, submitted to be allowable at least for the reasons stated above with regard to allowability of claim 1.

## **III. Rejection of Dependent Claims 8, 17, 26 and 35 Under 35 U.S.C. 103(a)**

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 10, 19 and 28 under 35 U.S.C. § 103(a) as being anticipated by Ayyagari and Singhal have been overcome and requests that the rejection be withdrawn. Additionally, Matta does not overcome the deficiencies of Ayyagari and

Singhal. Claims 8, 17, 26 depend from independent claims 1, 10, 19 and 28, respectively, and are, consequently, also respectfully submitted to be allowable at least for the reasons stated above with regard to allowability of claim 1.

**CONCLUSION**

Based on at least the foregoing, the Applicant believes that all claims 1-36 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Patent Agent at (312) 775-8093.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

Date: August 11, 2009

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